

CHAPTER 8

LAW ENFORCEMENT

1) LAW ENFORCEMENT

U.S. Coast Guard vessels are identified by a distinctive stripe, the words "**U.S. COAST GUARD**" on the side of the vessel, the Coast Guard Ensign, and are manned by uniformed personnel. Coast Guard law enforcement personnel may also be found aboard other vessels displaying the Coast Guard Ensign (U.S. Navy Vessels, Coast Guard Auxiliary vessels, state and local law enforcement vessels, etc.).

The Coast Guard has authority to make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, in order to enforce Federal laws. To compel compliance with boardings, inquiries, examinations, inspections and searches of vessels, the Coast Guard may use all necessary force. A vessel underway, upon being hailed by a Coast Guard vessel or patrol boat, is required to stop immediately or maneuver in such a way as to permit the boarding officer to come aboard. Failure to stop to permit boarding may subject the operator or owner to a maximum penalty of \$5000. Forcibly resisting a Coast Guard boarding officer is a felony punishable up to 10 years in prison and a \$250,000 fine.

The Coast Guard, for failure to comply with equipment requirements, numbering requirements, the Rules of the Road, or to report a boating accident, may impose civil penalties.

2) COAST GUARD BOARDING POLICY

An important Coast Guard mission is maritime law enforcement on the high seas and on waters subject to the jurisdiction of the United States. The Coast Guard enforces all Federal laws, including those dealing with: the 200 nautical mile exclusive economic zone, drug smuggling, illegal immigration, safety, boating while intoxicated and water pollution.

To enforce these laws on the water, the Coast Guard is empowered to board and inspect vessels. Many of the laws can be successfully enforced only by boarding a vessel while it is underway. Nationwide about 70,000 boardings are conducted annually, with nearly half finding noncompliance with laws and regulations.

Random boardings are key to successfully ensuring compliance with all Federal Laws, including those dealing with smuggling contraband. As a result of routine boardings, the Coast Guard discovers many safety, operating condition, and contraband violations that would otherwise have been impossible to detect.

Boardings need not be based on suspicion that a violation is occurring aboard a vessel. The purpose for conducting law enforcement boardings is to enforce all applicable U.S. laws and to educate mariners on the proper and safe practices associated with operating vessels. This authority to conduct administrative inspections of recreational and commercial vessels has been consistently upheld by the courts. All Coast Guard officers and petty officers are Federal law enforcement officers, and with few exceptions, they may board any United States vessel at any time and location even without any suspicion of wrongful activity. Because civil and criminal violations can take place, and have occurred, on all types of vessels, all are subject to the Coast Guard's boarding policy.

The Coast Guard boarding team is armed. Although most mariners that are boarded are engaged in legitimate recreational or commercial pursuits, for their own safety and that of the public, the boarding team members must be prepared at all times for the rare situations in which the capability to use force may be necessary. The Coast Guard, as a Federal Law Enforcement Agency, trains its personnel to understand the risks of their mission and to protect themselves, and the public.

The Coast Guard follows a standard procedure before boarding. The boarding team contacts the vessel and provides an explanation of what is about to happen. Coast Guard personnel will always properly identify themselves, will always be in uniform, coveralls, or survival suits displaying the Coast Guard insignia.

Once aboard the vessel, examination is usually limited to determining the vessel's status and checking for compliance with Federal civil law applicable to that vessel engaged in a particular activity. If, during inspection, a reasonable suspicion develops that the vessel has been engaged in criminal activity, the boarding officer may investigate further. Particular areas of a vessel may be searched if probable cause is developed to believe evidence or contraband or evidence is located there. If the vessel is subject to a border or customs inspection, the boarding officer may search the entire vessel.

Coast Guard Boarding Team

Coast Guard boarding officers are trained to be courteous to the public. If there is full cooperation, the administrative inspection of a vessel that is in full compliance will be over quickly, and with minimum disruption. Failure to cooperate or hostility will make verification of compliance with the checklist of requirements more difficult for the boarding officer, and is likely to lengthen the amount of time required to complete the boarding.

Coast Guard vessels may have their running lights turned off at night while on patrol. Running lights, if off, will be turned on prior to boarding, and a light will be directed at the Coast Guard Ensign flying from the mast so that the Coast Guard vessel is easily recognized. If possible, the red racing stripe on the bow will also be illuminated. Even if the boarding is being done by a boat from a U.S. Navy vessel, that boat or the U.S. Navy vessel will fly the Coast Guard Ensign.

Many law-abiding citizens are uncomfortable in the presence of an armed boarding party, but Coast Guard boarding team members are well trained in the handling and use of their weapons. It is an unfortunate necessity that, in carrying out their law enforcement duties, Coast Guard members must be armed to ensure both public and personal safety.

The Coast Guard strives, when conducting a boarding, for a proper balance between the intrusion into the activities of law abiding individuals and the Coast Guard mission of enforcing the law.

Occasionally, the Coast Guard will receive a complaint alleging that a boarding was conducted improperly. These complaints involve a very small fraction of the boardings that take place annually. Nevertheless, any complaints of boarding contrary to the Coast Guard policy will be investigated. Complaints should be directed to the Coast Guard District Commander at this address:

Commander (ole)
Eleventh Coast Guard District
Coast Guard Island
Alameda, CA 94501-5100
(510) 437-3700 24 hrs a day, ask to speak with the Law Enforcement Duty Officer.

3) SMUGGLING

Significant amounts of contraband, especially illegal drugs enter the United States via vessels. The most common drugs smuggled are marijuana, hashish, and cocaine. The Coast Guard aims to prevent drug trafficking by interdicting drug-carrying vessels at sea. A substantial number of undocumented migrants also enter the United States, in violation of immigration laws, by vessel. Mariners observing suspicious activity or having information that a vessel may be involved in narcotics trafficking or carrying illegal migrants are requested to contact the nearest Coast Guard unit or:

Commander (ole)
Eleventh Coast Guard District
Coast Guard Island
Alameda, CA 94501-5100
(510) 437-3700 24 hrs a day, ask to speak with the Law Enforcement Duty Officer.

Any report should include, if available: Name, homeport, flag displayed, date, time and position, estimated course and speed, description and color of vessel. An incomplete report is better than no report.

4) COAST GUARD POLICY ON STOLEN BOAT REPORTS

Due to its status as a maritime law enforcement agency, and because of its high visibility and availability to the boating public, the Coast Guard is often the first agency approached by persons whose boats have been stolen. In many cases, the applicable state has the lead role in investigating and prosecuting cases of property theft, including boats.

Nevertheless, the Coast Guard will keep a file on any stolen vessel case, issue a vessel lookout, conduct searches/harbor checks as appropriate, and coordinate action with appropriate federal, state, and local authorities.

5) HIJACKING DANGER

The U.S. Coast Guard warns California boaters of possible danger from hijacking and acts of piracy along the Pacific coast. While the incidence of known or suspected hijacking has been relatively small in the past few years, the possibility of hijacking exists in the Pacific just as it does in the Atlantic, Gulf of Mexico, and Caribbean waters.

6) MARINE ENVIRONMENTAL PROTECTION

A. Oil or hazardous substance

The discharge of oil, oily waste, or hazardous substances into or upon waters of the United States is prohibited by a variety of treaties, laws, and regulations. As soon as the person in charge of a vessel, or an offshore facility learns that oil or a hazardous substance has been discharged under circumstances giving rise to U.S. jurisdiction over the vessel, the facility, or the discharge, that person must notify the Coast Guard, by the most rapid means available.

All reports of oil or hazardous substance discharges should be made directly to the National Response Center (NRC) at the toll free number **(800) 424-8802**. The NRC is staffed twenty-four hours a day, seven days a week by personnel specifically trained in handling reports of water pollution. The NRC duty officer will record the information received and pass it to the appropriate Coast Guard unit for immediate investigation. If the report cannot immediately be made to the NRC, the reporting party may first contact any Coast Guard unit. The reporting party must also notify the NRC as soon afterwards as possible.

i. Clean Water Act / OPA 90

Section 311 of the Clean Water Act, (CWA; formerly known as the Federal Water Pollution Control Act), as amended by the Oil Pollution Act of 1990 (OPA 90), codified at 33 USC 1321, prohibits the discharge of oil or hazardous substances, without a permit or other authorization, in quantities which may be harmful, into or upon navigable waters of the U.S., adjoining shorelines, contiguous zone waters, or waters seaward of the contiguous zone which may affect U.S. natural resources, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act. 33 CFR 2.05-25(b) describes the waters to which this prohibition applies as all waters over which the United States may constitutionally exercise jurisdiction, including, at a minimum, all inland rivers and their tributaries plus all waters within the 200 nautical mile U.S. Exclusive Economic Zone. A harmful quantity is any amount of oil or hazardous substance that violates applicable water quality standards, or causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines. 40 CFR 110.3.

Congress created both criminal sanctions and civil penalties for unlawful discharges. 33 USC 1319(c) sets the maximum criminal sanctions for violation of CWA/OPA 90 as follows:

For a first offense of negligent discharge: 1 year imprisonment and/or fine of not less than \$2,500 nor more than \$100,000 for an individual, \$200,000 for an organization. Subsequent negligent discharge: 2 years imprisonment and/or a fine.

For a first offense of knowing discharge: 3 years imprisonment and/or fine of not less than \$5,000 nor more than \$250,000 for an individual, \$500,000 for an organization. Subsequent knowing discharge: 6 years imprisonment and/or a fine. If the discharger also knows that another person is placed in imminent danger of death or serious bodily harm by the discharge, the sanctions are larger. A first knowing endangerment offense can subject the discharger to 15 years imprisonment and/or a fine of not more than \$250,000 for an individual, \$500,000 for an organization. Knowing endangerment offenses committed after a first conviction results in doubled maximum punishment “with respect to both fine and imprisonment.”

Separately, 33 USC 1321(b)(5) establishes that failure to notify the Coast Guard of a known discharge is unlawful. If convicted, maximum punishment is: 5 years imprisonment and/or fine up to \$250,000 for an individual, \$500,000 for an organization.

CWA/OPA 90 also establishes a three-tiered system of civil penalties that may be assessed against the owner, operator, or person-in-charge of the discharging vessel or offshore facility. Ranging from lowest to highest, the three tiers of civil penalties are Class I, Class II, and Judicial. Class I penalties may be assessed by a Coast Guard hearing officer in an amount not to exceed \$11,000 per violation up to a maximum of \$27,500 per incident. Class II penalties may be assessed by a Coast Guard Administrative Law Judge in an amount not to exceed \$11,000 per day of violation, up to a maximum of \$137,500 per incident. Judicial penalties may be assessed by a District Court of the United States in an amount not to exceed the greater of \$27,500 per day of violation (with no limit on the maximum penalty per incident), or \$1,100 per barrel of oil or unit of reportable quantity of hazardous substance discharged.

These civil penalties are based upon strict liability. Thus, with a very few, narrow exceptions, whenever a prohibited discharge occurs, a civil penalty may be assessed. This does not mean that culpability is ignored. It remains a factor that is considered when determining the amount of any particular penalty. Moreover, in the event that a discharge occurs as a result of the gross negligence or willful misconduct of the owner, operator, or person-in-charge, a District Court of the United States may impose a judicial civil penalty in the amount of not less than \$100,000, and not more than \$3,300 per barrel of oil or unit of reportable quantity of hazardous substance discharged.

CWA/OPA 90 provides the President with the authority to either respond to the discharge (by removing the discharged substance and minimizing the environmental damage), or to order the party responsible for the discharge to do so. This authority has been delegated to the Commandant of the Coast Guard and to each Federal On Scene Coordinator (FOSC). Under most circumstances, every responsible party is strictly liable for all clean-up costs. If, for whatever reason, the government or a third party responds to the discharge, all costs will be charged to the Oil Spill Liability Trust Fund (OSLTF).

The OSLTF will then seek to recover from the responsible party all costs incurred in connection with the discharge. This may include a wide variety of costs related only indirectly to the removal effort, such as amounts spent to investigate the discharge and to identify the responsible party.

The responsible party must comply with an order to respond issued by the President, the Commandant of the Coast Guard, or the FOSC. Failure to comply with such an order may result in any of the three tiers of civil penalty, up to the maximum (judicial civil penalty) in the amount of \$27,500 per day of violation or 3 times the cost incurred by the OSLTF as a result of the failure.

Of course, the party responsible for the discharge may respond, either in person or through an agent, before being ordered to do so. In that case, the responsible party must act in accordance with the regulations at 33 CFR 153.305. In general, this means that the responsible party must control the source of the discharge, prevent further discharges, halt or slow the spread of the discharge, and remove as much of the substance as possible, using mechanical means such as containment booms, vacuum trucks, and absorbent pads. This also means that, unless the FOSC has given permission to do so, the responsible party may **not** introduce into the environment any chemical agents, such as detergents, dishwashing soap, or other solvents in an attempt to disperse an oil slick or sheen.

Regardless whether the government or the responsible party responds to the discharge, the government may seek to recover from the responsible party the monetary value of the damages suffered by its natural resources.

In the ordinary case, the government's ability to recover its costs and damages is limited by 33 USC 2704(a) as follows:

- Tank vessels over 3,000 gross tons, the greater of \$10 million or \$1,200 per gross ton;
- Tank vessels 3,000 gross tons or less, the greater of \$2 million or \$1,200 per gross ton;
- Other vessels, the greater of \$500,000 or \$600 per gross ton;
- Offshore facilities (except Deepwater Port), all removal costs plus \$75 million; and
- Onshore facilities and Deepwater Ports, \$350 million.

The government's ability to recover its costs and damages are not limited if the responsible party (or an agent of the responsible party) caused the discharge through gross negligence or a violation of a US regulation. Likewise, if the responsible party fails to report the discharge; assist or cooperate with the removal effort when asked; or comply with a federal order issued under CWA/OPA90 or the Intervention on the High Seas Act, the government can seek to recover all of its costs and damages.

ii. MARPOL 73/78 / APPS

Section 8 of the Act to Prevent Pollution from Ships (APPS), as amended (now codified at 33 USC 1907), prohibits the discharge of oil or harmful substances by U.S. flagged ships anywhere, by other ships while in the navigable waters of the United States, and by facilities while under U.S. jurisdiction, under any circumstance that amounts to a violation of Annex I of the International Convention for the Prevention of Pollution From Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78).

33 USC 1908 makes any knowing violation of the MARPOL Protocol, APPS, or any regulation issued thereunder, a class D felony. Each such offense is subject to a maximum penalty of 6 years imprisonment and/or a fine of up to \$250,000 for an individual, \$500,000 for an organization.

Congress also established civil penalties. Each violation of the MARPOL Protocol, APPS, or any regulation issued thereunder, can give rise to a civil penalty of up to \$27,500. Separately, each false, fictitious, or fraudulent statement or representation made, in any matter in which a statement or representation is required to be made, can give rise to a civil penalty of up to \$5,500.

Any person providing information leading to either imposition of a fine or assessment of a civil penalty may be awarded up to one-half of the amount of the fine or penalty.

B. Garbage

i. Regulations implementing Annex V of MARPOL 73/78 / APPS

To implement Annex V of MARPOL 73/78, the Coast Guard promulgated regulations, now codified at 33 CFR 151.51 – 151.79. These regulations define what types of garbage may be discharged and into or upon which waters those items may be discharged. In general, the regulations and MARPOL provide as follows:

U.S. LAKES, RIVERS, BAYS, SOUNDS, AND UP TO 3 MILES FROM SHORE

Legal: Grey water (drainage from shower, laundry, bath, and wash basins), dishwater.

Illegal: ANY garbage other than grey water or dishwater.

3 TO 12 NAUTICAL MILES FROM SHORE

Legal: Grey water, dishwater, and, if ground or comminuted into pieces less than 1 square inch: food waste, paper, rags, glass, crockery, and metal.

Illegal: Solid waste listed above (if in pieces larger than 1 square inch), dunnage (lining and packing materials that float) and plastic.

12 TO 25 NAUTICAL MILES FROM SHORE

Legal: Grey water, dishwater, food waste, paper, rags, glass, crockery, and metal.

Illegal: Dunnage and plastic.

MORE THAN 25 NAUTICAL MILES FROM SHORE

Legal: Grey water, dishwater, food waste, paper, rags, glass, crockery, metal, and dunnage

Illegal: Plastic

Note that **plastic of any kind, whether ground up or not, is NEVER legal to discharge anywhere at any time.** Unless properly incinerated in accordance with strict regulations, all plastic refuse must be **stored on board** until mooring, and then disposed of properly ashore.

Each manned U.S. ship that is 26 feet or more in length, plus each manned floating platform that is documented under U.S. law, or operating under U.S. authority, must display a placard notifying the reader of specific garbage disposal regulations. In addition, each manned, oceangoing, U.S. documented or stated numbered ship of 40 feet or more in length that is engaged in commerce or is equipped with a galley and berthing, plus each manned fixed or floating platform that is documented under U.S. law, or operating under U.S. authority, must carry a Waste Management Plan. The plan must be in writing, must designate the person who is in charge of carrying out the plan, and must describe procedures for collecting, processing, storing, and properly disposing of garbage.

As noted above, 33 USC 1908 makes any knowing violation of the MARPOL Protocol, APPS, or any regulation issued thereunder, a class D felony. Each such offense is subject to a maximum penalty of 6 years imprisonment and/or a fine of up to \$250,000 for an individual, \$500,000 for an organization.

Similarly, the civil penalties provided in APPS apply to violations of Annex V of MARPOL and/or the implementing regulations. Each such violation can give rise to a civil penalty of up to \$27,500. Separately, each false, fictitious, or fraudulent statement or representation made, in any matter in which a statement or representation is required to be made, can give rise to a civil penalty of up to \$5,500.

Any person providing information leading to either imposition of a fine or assessment of a civil penalty may be awarded up to one-half of the amount of the fine or penalty.

ii. The Refuse Act

The Refuse Act, now codified at 33 USC 407, prohibits the throwing, discharge, or deposit of any refuse matter of any kind into navigable waters of the U.S., their tributaries, or their banks. The only exceptions to this broad prohibition are liquids flowing from streets or sewers, discharges made in connection with public works, construction projects, or improvements to navigable waters found necessary and proper by U.S. officials, and discharges made under a permit granted by the U.S. Army Corps of Engineers. Congress established criminal sanctions for violations of the Refuse Act as follows: imprisonment of not less than 30 days nor more 1 year and/or fine not more than the greater of \$25,000 per day of violation or \$100,000 for an individual, \$200,000 for an organization. As under APPS, up to one-half of any fine imposed may be awarded to the person or persons providing information that led to conviction.

7) OPERATING A VESSEL WHILE INTOXICATED

Federal law prohibits operating recreational and commercial vessels while intoxicated. Coast Guard implemented regulations setting federal standards to prosecute violations based on either behavioral signs of intoxication or on blood alcohol concentration (BAC). The regulations are found in Part 95 of Title 33, Code of Federal Regulations.

These regulations apply to all vessels (except public vessels) operating on U.S. waters and to vessels owned in the U.S. and operating on the high seas. This includes foreign vessels operating in U.S. waters. The regulations are also applicable at all times to commercial vessels required to hold Coast Guard Certificates of Inspection.

Operating a Vessel

An individual is considered to be **operating** a vessel when:

- 1) The individual has an essential role in the operation of a recreational vessel underway, including but not limited to navigating or controlling the vessel's propulsion system; or
- 2) The individual is a crewmember, pilot, or a watchstander not a regular member of the crew, of a vessel other than a recreational vessel.

Standard of Intoxication

A person operating a vessel is deemed intoxicated if the following standards are met or exceeded:

- 1) A BAC of .10% for operators of recreational vessels, based on a chemical test;
- 2) A BAC of .04% for operators of all other vessels, including commercial vessels, based on a chemical test; or
- 3) If the effects of the intoxicant(s) consumed by the individual on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation.

To ensure consistency between federal and state standards, these regulations also provide that the state blood alcohol concentration (BAC) standard, will be applied to vessels operating on waters within the geographic boundaries of that state. In California state waters (within 3 statute miles from the shoreline) the BAC standards are:

- 1) .08% for operators of recreational vessels;
- 2) .04% for anyone operating any vessel other than a recreational vessel; or
- 3) .01% for anyone under 21 years of age operating any vessel.

Reasonable Cause for Directing a Chemical Test

A Coast Guard official, other law enforcement officer, or a marine employer may direct an individual operating a vessel to undergo a chemical test when reasonable cause exists. Reasonable cause exists when:

- 1) The individual was directly involved in a marine casualty; or
- 2) The individual is suspected of being in violation of the intoxication standards defined in the regulations in 33 CFR Part 99.020 or 95.025.

Refusal To Submit To Testing

If an individual refuses to submit to a timely chemical test when directed by a law enforcement officer based on reasonable cause, evidence of refusal is admissible in any administrative proceeding and the individual will be presumed to be intoxicated. This includes administrative proceedings which could cause suspension or revocation of an individual's Coast Guard license or document.

If an individual refuses to submit to a chemical test when directed by a marine employer based on reasonable cause, evidence of the refusal is admissible in any administrative proceeding. The term "marine employer" is defined as the owner, managing operator, charterer, agent, master or person in charge of a vessel other than a recreational vessel.

General Operating Rules For Vessels Subject To Coast Guard Inspection Under Chapter 33 Of Title 46, United States Code

While on board a vessel inspected, or subject to inspection, a crewmember (including a licensed individual), pilot or watchstander not a regular member of the crew:

- 1) Shall not perform or attempt to perform any scheduled duties within four hours of consuming any alcohol;
- 2) Shall not be intoxicated at any time;
- 3) Shall not consume any intoxicant while on watch or duty; and,
- 4) May consume a legal non-prescription or prescription drug provided the drug does not cause the individual to become intoxicated.

Responsibility For Compliance

The marine employer shall exercise due diligence to assure compliance with the applicable provision of this part. If the marine employer has reason to believe that an individual is intoxicated, the marine employer shall not allow that individual to stand watch or perform other duties.

Penalties

An individual who is intoxicated when operating a vessel:

- a) Is liable for a civil penalty of not more than \$1,000.00 for a first violation and up to \$5,000.00 for a subsequent violation; or
- b) Commits a class A misdemeanor and shall be fined not more than \$100,000.00, imprisoned for not more than one year, or both.

An individual holding a Coast Guard license or document who is found to be in violation of these regulations may also be subject to suspension and revocation proceedings.

KEEP BOATING SAFE !